THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.15240 of 2007

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the first respondent in not paying full salary for the period from 8.3.2005 to 31.1.2006 (328 days) to the petitioner as arbitrary, illegal and contrary to regulations by setting aside the office order No.P2/394(1)/2006-KG dated 22.9.2006 of the first respondent and consequently direct the respondents to pay the salary due to the petitioner treating the period as leave on full pay.

The facts are not much in dispute. It appears, petitioner who is working as Driver in respondent-Corporation and attached to Kushaiguda Depot, Hyderabad. On 8.3.2005, while he was performing duty on the route Bangalore to Hyderabad, an accident had occurred near Priya Cement Factory, Gooty. At the time of accident, petitioner was sitting in the Bus as an extra Driver and was on duty. Due to the said accident, his left knee got fractured and received some other injuries. He was shifted to Doan Government Hospital and from there to APSRTC Tarnaka Hospital and was treated there from 8.3.2005 to 31.1.2006. Vide proceedings dated 12.7.2006, first respondent sanctioned hospital leave on full pay for the entire period from 8.3.2005 to 31.1.2006 (328 days). Subsequently, vide office order dated 2.9.2006, first respondent sanctioned hospital leave only for 180 days and the remaining period of 148 days was treated as half pay leave (i.e. 94 days as half pay leave (MC) and 54 days as half pay leave (PA). The grievance of the petitioner is that since the Chief Medical Officer, APSRTC, who is the superior authority, has recommended for sanction of hospital leave on full pay, therefore, he is

entitled for full salary for the entire period from 8.3.2005 to 31.1.2006. According to the petitioner, he is entitled for full pay as per Regulation 46(4)(a) of Andhra Pradesh State Road Transport Corporation Employees (Leave) Regulations 1963. Regulation 46 reads as under:

46. **Hospital Leave:**

(1) Subject to the provisions of this Regulation, a competent authority may grant hospital leave to employees other than those in Class-I or Class-II services while they are undergoing medical treatment for injuries sustained on duty.

(2) Hospital leave shall not be admissible in respect of an injury by an accident due to carelessness on the part of the employee viz. while he was under the influence of drink or drugs or due to wilful disobedience of orders or wilful removal of safety devices.

(3) The period of leave granted shall be such as is certified by the competent Medical Officer to be necessary but shall in no case exceed six months in respect of any one injury.

(4) Subject to the limits specified in clause (3), hospital leave may be granted on leave salary equal to either full pay or half pay as follows:

(a) On full pay, where the competent authority is satisfied that the injury was due to causes beyond the control of employees; and

(b) On half pay, where the competent authority is satisfied that the injury was due to causes which though within the control of the employee did not amount to carelessness on his part.

(5) Hospital leave is not debitable to the leave account and ma be combined with any other leave which may be admissible. Provided that the total period of leave does not exceed 24 months.

(6) The grant of hospital leave to a non-payment employee will be subject to the codition that the period of leave does not extended beyond the period for which the post from which he proceeds on leave is sanctioned.

(7) If the employee is one to whom the Workmen's Compensation Act, 1923 (Central Act 8 of 1923), applies, the amount of leave salary payable during hospital leave shall be reduced by the amount of compensation payable under clause (d) of sub-section (1) of section 4 of that Act. In such cases no payments should be made to the employees other than those admissible to him in accordance with the provisions of the said clause (d) until he returns to duty but the period of disablement shall be reckoned from the fourth day following the date of injury.

(8) The competent authority may after the employee has resumed duty authorize the payment of leave salary for the period of disablement in accordance with the provisions of clause (4), subject to the following conditions, namely:-

i) that the competent medical officer certifies that the employee is completely fit to resume duty; and

ii) that the competent authority is satisfied that on the employee's return to duty the temporary disablement has not resulted in a reduction in the employee's wages owing to the accident.

The learned counsel for petitioner strenuously contended that as per Regulation 46(3), the period of leave granted shall be such as is certified by the competent Medical Officer to be necessary, but shall in no case exceed six months in respect of any one injury, and in the present case, since the petitioner suffered with multiple injuries, respondents could have treated the entire period as on leave, which is

just and proper in the facts and circumstances of the case.

The respondents filed a counter denying the allegations made by the petitioner and asserted that basing on the claim and certification of Senior Medical Officer, hospital leave was sanctioned for the entire period from 8.3.2005 to 31.1.2006 vide proceedings dated 12.7.2006 erroneously instead of sanctioning leave for 180 days which is the maximum period eligible in terms of Regulation 46(3) of Regulations. Therefore, a revised office order dated 22.9.2006 was passed treating the period from 8.3.2005 to 3.9.2005 i.e. 180 days as hospital leave and the remaining period from 4.9.2005 to 6.12.2005 i.e. 94 days as half pay leave (MC) and from 7.12.2005 to 31.1.2006 i.e. 54 days as half pay leave (PA). Further, the Depot Manager is the competent authority to sanction leave basing on the medical certificate.

From the above, it appears that though initially a decision was taken to treat the entire period of 328 days as hospital leave, but Regulation 46(3) states that the hospital leave can be granted maximum for 180 days and not more than that, therefore the authorities have taken a decision to treat the period of 180 days as hospital leave and the remaining period of 148 days as half pay leave (i.e. 94 days as half pay leave (MC) and 54 days as half pay leave (PA). The mere certification and recommendations of Medical Officer are not binding on respondents 1 and 2. The third respondent is only a certifying authority and he is not the Unit Officer or Drawing Officer to decide and apply leave regulations as applicable to the petitioner. A combined reading of Regulation 46(3),(4) and (4)(a) of Regulations would make it clear that the petitioner is entitled for maximum of 180 days towards hospital leave with full pay and the rest of the period needs to be regulated by the competent authority i.e. Depot Manager. Therefore, first respondent, vide impugned order dated 22.9.2006, has rightly

taken the decision, which is in tune with APSRTC Employees (Leave) Regulations, 1964. I am of the opinion that the respondents 1 and 2 have not committed any error calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

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C.V.RAMULU, J

Date: .12.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.15240 of 2007

27.12.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.15240 of 2007

Date: 27th December, 2007

Between:

M.Indrasena

.. Petitioner

And

The Depot Manager, APSRTC,
Kushaiguda Bus Depot,
Hyderabad & others.

.. Respondents